

1 THE WEISER LAW FIRM, P.C.
BRETT D. STECKER (admitted *pro hac vice*)
2 ROBERT B. WEISER (admitted *pro hac vice*)
22 Cassatt Avenue
3 Berwyn, PA 19312
Telephone: (610) 225-2677
4 Facsimile: (610) 408-8062
bds@weiserlawfirm.com
5

Lead Counsel and Counsel for
6 *Plaintiff Robert Berg*

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 IN RE INTUITIVE SURGICAL
SHAREHOLDER DERIVATIVE
12 LITIGATION

13 _____
This Document Relates To:

14 ALL ACTIONS.
15 _____

) Lead Case No. 5-14-CV-00515-EJD
)
) JOINT STIPULATION TO DISMISS
) ACTION WITH PREJUDICE
)
)
) Courtroom: 4
) Judge: Hon. Edward J. Davila
)
Date Action Filed: February 3, 2014

16
17
18
19
20
21
22
23
24
25
26
27
28
JOINT STIPULATION TO DISMISS ACTION WITH PREJUDICE

1 WHEREAS, the above-captioned action (the “Action”) was initiated derivatively by Plaintiff
 2 Robert Berg (“Berg”) on behalf of Intuitive Surgical (the “Company”), against certain former and
 3 current officers and directors of the Company on February 3, 2014;

4 WHEREAS, Berg was appointed lead plaintiff pursuant to this Court’s July 30, 2014 Order;
 5 WHEREAS, City of Plantation Police Officers’ Employees’ Retirement System (“Plantation”
 6 and collectively with Berg, “Plaintiffs”), plaintiff in the related shareholder derivative action caption
 7 *City of Plantation Police Officers’ Employees’ Retirement System v. Guthart*, C.A. No.9726-CB
 8 pending in the Delaware Court of Chancery (the “Delaware Action”), stayed the Delaware Action and
 9 joined Berg to prosecute the Action in August 2014;

10 WHEREAS, on May 31, 2015, the parties stipulated to stay the Action and advised the Court
 11 that Berg and Plantation were litigating the claims in the Action along with the state court plaintiffs in a
 12 related derivative action pending in Superior Court of the State of California, County of San Mateo,
 13 captioned *Public School Teachers’ Pension & Retirement Fund of Chicago v. Guthart et al.*, No. CIV-
 14 529630 (Cal. Super. Ct.) (the “State Court Action”).

15 WHEREAS, the Action was stayed pursuant to this Court’s June 2, 2016 Order, pending the
 16 outcome of the State Court Action (ECF No. 108);

17 WHEREAS, Berg and Plantation intervened in the State Court Action and actively participated
 18 in its litigation, including reviewing documents, attending and taking depositions of critical witnesses,
 19 and otherwise assisting in the preparation of the State Court Action for trial;

20 WHEREAS, on August 8, 2017, the parties entered into an agreement to settle all of the
 21 derivative actions (the “Settlement”);

22 WHEREAS, the parties to three derivative actions agreed to present the proposed Settlement for
 23 approval to the Superior Court of the State of California, County of San Mateo;

24 WHEREAS, the Superior Court of the State of California, County of San Mateo held a hearing
 25 on the derivative plaintiffs’ motion for preliminary approval of the Settlement on August 9, 2017;

26 WHEREAS, on August 9, 2017, the Superior Court of the State of California, County of San
 27 Mateo approved a long-form Notice of Hearing and Proposed Derivative Settlement, and a Summary
 28

1 Notice regarding the same, and notice of the Settlement and its terms was accordingly provided to
2 stockholders;

3 WHEREAS, the Superior Court of the State of California, County of San Mateo held a final
4 approval hearing on October 20, 2017, at which it afforded any interested stockholders the opportunity
5 to be heard regarding the Settlement, thereby fulfilling the notice requirements of Federal Rule of Civil
6 Procedure 23.1;

7 WHEREAS, the Settlement was finally approved by the Superior Court of the State of
8 California on October 20, 2017;

9 WHEREAS, pursuant to the terms of the Settlement, Plaintiffs seek to dismiss the claims
10 asserted in the Action;

11 WHEREAS, no compensation in any form has been passed directly or indirectly from any of the
12 defendants to Plaintiffs or Plaintiffs' counsel other than that ordered in the State Court Action;

13 NOW THEREFORE, the parties to the above-captioned Action, through their respective
14 counsel, stipulate and agree, subject to approval of the Court, as follows:

- 15 1. Pursuant to the parties' Settlement, this Action shall be dismissed with prejudice; and
16 2. Each party is to bear his, her, or its own costs.

17 IT IS SO STIPULATED AND AGREED, this 26th day of December, 2017.

18
19 THE WEISER LAW FIRM, P.C.
20 BRETT D. STECKER (admitted pro hac vice)

21 s/ Brett D. Stecker
22 BRETT D. STECKER
23 bds@weiserlawfirm.com
24 ROBERT B. WEISER (admitted pro hac vice)
25 rw@weiserlawfirm.com
26 JAMES M. FICARO
27 jmf@weiserlawfirm.com
28 22 Cassatt Avenue
Berwyn, PA 19312
Telephone: (610) 225-2677
Facsimile: (610) 408-8062

*Lead Counsel and Counsel for
Plaintiff Robert Berg*

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
BRETT M. MIDDLETON (Bar No. 199427)
brettm@blbglaw.com
12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Telephone: (858) 720-3189
Facsimile: (858) 793-0323

*Counsel for City of Plantation Police Officers'
Employees' Retirement System*

KEKER & VAN NEST LLP

s/ Michael D. Celio

MICHAEL D. CELIO (Bar No. 197998)
mcelio@kvn.com
CODY S. HARRIS (Bar No. 255302)
charris@kvn.com
KATE E. LAZARUS (Bar No. 268242)
klazarus@kvn.com
PHILIP J. TASSIN (Bar No. 287787)
ptassin@kvn.com
633 Battery Street
San Francisco, CA 94111

*Counsel for Defendants Gary S. Guthart,
Marshall L. Mohr, Lonnie M. Smith, David J.
Rosa, Mark J. Meltzer, Jerome J.
McNamara, Augusto V. Castello, Salvatore
J. Brogna, Colin Morales, Craig H. Barratt,
Eric H. Halvorson, Amal M. Johnson, Alan
J. Levy, Mark J. Rubash, and George Stalk,
Jr.*

RAMSEY & EHRLICH LLP

s/ Ismail Ramsey

ISMAIL RAMSEY (Bar No. 189820)
izzy@ramsey-ehrllich.com
803 Hearst Ave.
Berkeley, CA 94701

*Counsel for Nominal Party Intuitive
Surgical, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2017, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 26, 2017.

/s/ Brett D. Stecker

BRETT D. STECKER

THE WEISER LAW FIRM, P.C.

22 Cassatt Avenue

Berwyn, PA 19312

Telephone: 610/225-2677

Facsimile: 610/ 408-8062

Email: bds@weiserlawfirm.com

Mailing Information for a Case 5:14-cv-00515-EJD In re Intuitive Surgical Shareholder Derivative Litigation

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Michael D. Celio**
mcelio@keker.com,michael-celio-0196@ecf.pacerpro.com,gloria-peterson-7992@ecf.pacerpro.com,gpeterson@keker.com,efiling@keker.com
- **Jeffrey Joseph Ciarlanto**
ciarlanto@prolawpa.com
- **Alexander Barnes Dryer**
adryer@keker.com,dawn-curran-3389@ecf.pacerpro.com,dcurran@keker.com,efiling@keker.com,alexander-dryer-2761@ecf.pacerpro.com
- **Jo W. Golub**
jgolub@keker.com,sgiminez@keker.com,mvillagra@keker.com,julie-selby-5502@ecf.pacerpro.com,sandy-giminez-6735@ecf.pacerpro.com,efiling@keker.com,jsselby@keker.com,molly-villagra-5677@ecf.pacerpro.com,SHarmison@keker.com,jah@keker.com,jo-golub-8129@ecf.pacerpro.com
- **Cody Shawn Harris**
charris@kvn.com,jacquelynn-smith-8972@ecf.pacerpro.com,cody-harris-9947@ecf.pacerpro.com,jhartmann@kvn.com,efiling@kvn.com,jsmith@kvn.com,rabaya@kvn.com,sharmison@kvn.com
- **Kate Ellis Lazarus**
klazarus@keker.com,sgiminez@keker.com,kate-lazarus-9440@ecf.pacerpro.com,sandy-giminez-6735@ecf.pacerpro.com,efiling@keker.com
- **Mark Lebovitch**
MarkL@blbglaw.com,kenneth@blbglaw.com,errol.hall@blbglaw.com
- **Brett M Middleton**
brettm@blbglaw.com
- **Laurie Carr Mims**
lmims@keker.com,smccabe@keker.com,susan-mccabe-8631@ecf.pacerpro.com,efiling@keker.com,laurie-mims-6204@ecf.pacerpro.com
- **Mark Cotton Molumphy**
mmolumphy@cpmlegal.com,zagudelo@cpmlegal.com,jacosta@cpmlegal.com,gjensen@cpmlegal.com
- **Walter W. Noss**
wnoss@scott-scott.com,efile@scott-scott.com
- **Judith S. Scolnick**
jscolnick@scott-scott.com
- **Brett D. Stecker**
bds@weiserlawfirm.com,hl@weiserlawfirm.com
- **Philip James Tassin**
ptassin@keker.com,sgiminez@keker.com,sandy-giminez-6735@ecf.pacerpro.com,sharmison@keker.com,philip-tassin-6713@ecf.pacerpro.com,efiling@keker.com
- **Edward G Timlin**
Edward.Timlin@blbglaw.com

- **David L Wales**

davidw@blbglaw.com,kenneth@blbglaw.com,errol.hall@blbglaw.com,BrettM@blbglaw.com

- **Robert Brian Weiser**

rw@weiserlawfirm.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)